

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No.: 08 CIV. 4720
SCOTCHTOWN HOLDINGS, LLC.,

Plaintiffs,

**ANSWER TO VERIFIED COMPLAINT
AND AFFIRMATIVE DEFENSES**

-against-

THE TOWN OF GOSHEN and
STEPHEN P. ANDRYSHAK AS SUPERINTENDENT
OF HIGHWAYS OF THE TOWN OF GOSHEN,

Defendants.

-----X

The defendants, THE TOWN OF GOSHEN and STEPHEN P. ANDRYSHAK AS SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF GOSHEN, by and through their attorneys, LAW OFFICES OF DONALD L. FRUM, hereby answer the complaint as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs numbered "3," "4," "5," "6," "7," "12," "15," "16," "17," "18," "21," "23," "24," "26," and "27," of the verified complaint.

2. Denies the allegations contained in paragraphs numbered "19," "20," "22," "25," "28," "29," "30," and "31," of the verified complaint.

AS AND FOR A FIRST CAUSE OF ACTION ON

3. The defendant, answering paragraph numbered "32" of the verified complaint repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "31" inclusive of this Answer with the same force and effect as if herein set forth in full.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered "36" of the verified complaint.

5. Denies the allegations contained in paragraphs numbered "33," "34," "35," "37," "38," "39," "40," "41," "42," "43," "44," and "45," of the verified complaint.

AS AND FOR A SECOND CAUSE OF ACTION ON

3. The defendant, answering paragraph numbered "46" of the verified complaint repeats and reiterates the answer to each and every allegation contained in paragraphs "1" through "45" inclusive of this Answer with the same force and effect as if herein set forth in full.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations

contained in paragraph numbered "46," of the verified complaint.

5. Denies the allegations contained in paragraphs numbered "48," and "58," of the verified complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

6. That if it is determined that defendants, **THE TOWN OF GOSHEN and STEPHEN P. ANDRYSHAK AS SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF GOSHEN**, is responsible for the acts alleged in the Complaint, then plaintiffs failed to take appropriate action to mitigate any damages.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

7. The injuries and damages alleged to have been suffered by the plaintiffs were caused, in whole or part, by the conduct of the plaintiffs. Plaintiffs' claims therefore are barred or diminished in the proportion that such culpable conduct of the plaintiffs bear to the total culpable conduct causing the damages.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

8. The injuries and damages alleged in plaintiffs' Verified Complaint were caused or contributed to by the plaintiffs' culpable conduct in assuming the risk under the conditions and circumstances existing.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

9. Plaintiff cannot maintain this lawsuit against the defendants, **THE TOWN OF GOSHEN and STEPHEN P. ANDRYSHAK AS SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF GOSHEN**, since no prior written notice of any claimed dangerous or defective condition was given to the defendants, **THE TOWN OF GOSHEN and STEPHEN P. ANDRYSHAK AS SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF GOSHEN**, pursuant to the applicable provisions of law of the State of New York and other similar local municipal provisions of law.


AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

10. The Court lacks personal jurisdiction over the defendants, **THE TOWN OF GOSHEN and STEPHEN P. ANDRYSHAK AS SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF GOSHEN**, for failure of Plaintiff to comply with the requirements of the General Municipal Law of the State of New York and other similar local municipal provisions of law.

WHEREFORE, defendants, **THE TOWN OF GOSHEN and STEPHEN P. ANDRYSHAK AS SUPERINTENDENT OF HIGHWAYS OF THE TOWN OF GOSHEN**, respectfully requests that plaintiffs' Verified Complaint be dismissed, with costs, attorneys' fees, disbursements, and such other relief as the Court deems just and proper or, if such relief not be granted, then that its liability be limited or reduced as prayed herein.

Dated: Elmsford, NY
June 23, 2008

Yours, etc.,
LAW OFFICES OF DONALD L. FRUM

By: 
H. Malcolm Stewart, Esq.

Attorneys for Defendants
THE TOWN OF GOSHEN and
STEPHEN P. ANDRYSHAK
565 Taxter Road - Suite 150
Elmsford, NY 10523
914-347-5522

To:
James G. Sweeney, Esq.
Attorney for the Plaintiffs
One Harriman Square
PO Box 806
Goshen, NY 10924
(845) 291-1100